



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

DAVID MERO,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:20-3615-MGL
	§	
WARDEN PHELPS,	§	
Respondent.	§	

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
AND DISMISSING THE PETITION WITHOUT PREJUDICE  
AND WITHOUT REQUIRING THE RESPONDENT TO FILE A RETURN**

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Petitioner filed this as a 28 U.S.C. § 2241 action. He is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Petitioner’s petition be dismissed without prejudice and without requiring the respondent to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on November 2, 2020, but Petitioner failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court Petitioner’s petition is **DISMISSED WITHOUT PREJUDICE** and without requiring the respondent to file a return.

To the extent Petitioner moves for a certificate of appealability, such request is **DENIED**.

**IT IS SO ORDERED.**

Signed this 30th day of December, 2020, in Columbia, South Carolina.

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s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

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### **NOTICE OF RIGHT TO APPEAL**

Petitioner is hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.